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## **DEPARTMENT OF STATE**

### **22 CFR Part 126**

### **RIN 1400-AC97**

**[Public Notice: 7675]**

## **Amendment to the International Traffic in Arms Regulations: Libya and UNSCR 2009**

**AGENCY:** Department of State.

**ACTION:** Final Rule.

**SUMMARY:** The Department of State is amending the International Traffic in Arms Regulations (ITAR) to update the policy regarding Libya to reflect the additional modifications to the United Nations Security Council arms embargo of Libya adopted in September 2011.

**EFFECTIVE DATE:** This rule is effective [insert date of publication in the *Federal Register*].

**FOR FURTHER INFORMATION CONTACT:** Charles B. Shotwell, Director, Office of Defense Trade Controls Policy, Department of State, by telephone: (202) 663-2792; fax: (202) 261-8199; or e-mail: [DDTCResponseTeam@state.gov](mailto:DDTCResponseTeam@state.gov). ATTN: Part 126, Libya.

### **SUPPLEMENTARY INFORMATION:**

On September 16, 2011, the United Nations Security Council adopted resolution 2009, which modifies the arms embargo against Libya put in place by the adoption in February and March of resolutions 1970 and 1973, respectively.

Resolutions 1970 and 1973, and the May 2011 ITAR Amendment Regarding Libya

On February 26, 2011, the United Nations Security Council adopted Resolution 1970, paragraph 9 of which provides that UN member states shall immediately take the necessary measures to prevent the sale, supply, or transfer of arms and related materiel of all types to the Libyan Arab Jamahiriya, with certain exceptions. On March 17, 2011, the UN Security Council adopted Resolution 1973, paragraph 4 of which authorizes member states to take all necessary measures, notwithstanding the arms embargo established by paragraph 9 of Resolution 1970, to protect civilians and civilian populated areas under threat of attack in Libya. On May 24, 2011, the Department amended the ITAR to implement the Security Council's actions by adding Libya to §126.1(c), which identifies countries subject to UN Security Council arms embargoes. *See* 76 FR 30001. The Department also revised the previous policy on Libya contained in §126.1(k) to announce a policy of denial for all requests for licenses or other approvals to export or otherwise transfer defense articles and services to Libya, except where not prohibited under UNSC embargo and determined to be in the interests of the national security and foreign policy of the United States.

#### Resolution 2009

To the existing exceptions to the arms embargo, delineated in resolutions 1970 and 1973, resolution 2009 adds the supply, sale, or transfer to Libya of arms and related materiel, including technical assistance, intended solely for security or disarmament assistance to the Libyan authorities, and small arms, light weapons, and related materiel for the sole use of UN personnel, representatives of the media, and humanitarian and development workers and associated personnel. License applications submitted pursuant to these exceptions are notified in advance to the Committee of the Security Council concerning Libya, and are eligible for

approval in the absence of a negative decision by the Committee within five working days of such a notification.

Accordingly, the ITAR is amended to reflect these exceptions.

## **Regulatory Analysis and Notices**

### *Administrative Procedure Act*

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from §553 (Rulemaking) and §554 (Adjudications) of the Administrative Procedure Act. Since this rule is exempt from 5 U.S.C. §553, it is the view of the Department of State that the provisions of §553(d) do not apply to this rulemaking. Therefore, this rule is effective upon publication. The Department also finds that, given the national security issues surrounding U.S. policy towards Libya, that notice and public procedure on this rule would be impracticable, unnecessary, or contrary to the public interest. *See* 5 U.S.C. 808(2).

### *Regulatory Flexibility Act*

Since this amendment is not subject to the notice-and-comment procedures of 5 U.S.C. § 553, it does not require analysis under the Regulatory Flexibility Act.

### *Unfunded Mandates Reform Act of 1995*

This amendment does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*Executive Order 13175*

The Department has determined that this rule will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not pre-empt tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rule.

*Small Business Regulatory Enforcement Fairness Act of 1996*

This amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

*Executive Orders 12372 and 13132*

This amendment will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this amendment.

*Executive Orders 12866*

The Department of State does not consider this rule to be a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules governing the

conduct of this function are exempt from the requirements of Executive Order 12866.

*Executive Order 13563*

The Department of State has considered this rule in light of Executive Order 13563, dated January 18, 2011, and affirms that this regulation is consistent with the guidance therein.

*Executive Order 12988*

The Department of State has reviewed the amendment in light of sections 3(a) and 3 (b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

*Paperwork Reduction Act*

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

**List of Subjects in 22 CFR Part 126**

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 126, is amended as follows:

**PART 126 – GENERAL POLICIES AND PROVISIONS**

1. The authority citation for part 126 continues to read as follows:

**Authority:** Secs. 2, 38, 40, 42, and 71, Pub. L. 90-629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791 and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p.79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p.899; Sec. 1225, Pub. L. 108-375; Sec. 7089, Pub. L. 111-117.

2. Section 126.1 is amended by revising paragraph (k) to read as follows:

**§126.1 Prohibited exports and sales to certain countries.**

\* \* \* \* \*

(k) *Libya*. It is the policy of the United States to deny licenses or other approvals for exports or imports of defense articles and defense services destined for or originating in Libya, except that a license or other approval may be issued, on a case-by-case basis, for:

(1) Arms and related materiel of all types, including technical assistance and training, intended solely for security or disarmament assistance to the Libyan authorities and notified in advance to the Committee of the Security Council concerning Libya and in the absence of a negative decision by the Committee within five working days of such a notification;

(2) Small arms, light weapons, and related materiel temporarily exported to Libya for the sole use of UN personnel, representatives of the media, and humanitarian and development workers and associated personnel, notified in advance to the Committee of the Security Council concerning Libya and in the absence of a negative decision by the Committee within five working days of such a notification; or

(3) Other sales or supply of arms and related materiel, or provision of assistance or personnel, as approved in advance by the Committee.

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October 27, 2011

(Date)

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Ellen O. Tauscher,  
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